

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

**PARKER, SMITH & FEEK, INC.,** a  
Washington corporation,

Plaintiff,

v.

**MICHAEL J. REPH**, individually and his  
marital community, **WALTER R. WINTER**,  
individually and his marital community, AND  
**JEFFREY A. COLBY**, individually and his  
marital community,

Defendants.

Case No. 2:19-cv-01456-TSZ

**STIPULATED MOTION AND  
PROTECTIVE ORDER**

Plaintiff Parker, Smith & Feek, Inc. and Defendants Michael J. Reph, Walter R. Winter, and Jeffrey A. Colby, by and through their respective counsel of record, hereby move pursuant to Federal Rule of Civil Procedure 26(c) for entry of this Stipulated Protective Order.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, and trade secret information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket

1 protection on all disclosures or responses to discovery, the protection it affords from public  
2 disclosure and use extends only to the limited information or items that are entitled to confidential  
3 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
4 confidential information under seal.

5 2. “CONFIDENTIAL” MATERIAL AND “ATTORNEYS’ EYES ONLY” MATERIAL

6 “Confidential” material shall include, without limitation, the following documents and  
7 tangible things produced or otherwise exchanged: payment structure, information covered by the  
8 Health Insurance Portability and Accountability Act, and confidential personal information. As a  
9 subset of “Confidential” material, “Attorneys’ Eyes Only” material shall be information that the  
10 producing party believes in good faith is extremely sensitive confidential information that if  
11 disclosed to another party or non-party would create a substantial adverse impact on the producing  
12 party’s business, financial condition, ability to compete, standing in the industry, or any other risk  
13 of injury that could not be avoided by less restrictive means; such material shall include, without  
14 limitation, client contacts and information, detailed information about client revenue, benefit  
15 policies, key-decision makers, and amounts of the premiums.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as  
18 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
19 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
20 conversations, or presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information that is in  
22 the public domain or becomes part of the public domain through trial or otherwise.

1     4.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2             4.1     Basic Principles. A receiving party may use confidential material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
5 categories of persons and under the conditions described in this agreement. Confidential material  
6 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
7 that access is limited to the persons authorized under this agreement.

8             4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
9 by the court or permitted in writing by the designating party, a receiving party may disclose any  
10 confidential material only to:

11             (a)     the receiving party’s counsel of record in this action, as well as employees of  
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13             (b)     the officers, directors, and employees (including in house counsel) of the receiving  
14 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a  
15 particular document or material produced is for Attorney’s Eyes Only and is so designated;

16             (c)     experts and consultants to whom disclosure is reasonably necessary for this  
17 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18             (d)     the court, court personnel, and court reporters and their staff;

19             (e)     copy or imaging services retained by counsel to assist in the duplication of  
20 confidential material, provided that counsel for the party retaining the copy or imaging service  
21 instructs the service not to disclose any confidential material to third parties and to immediately  
22 return all originals and copies of any confidential material;

23             (f)     during their depositions, witnesses in the action to whom disclosure is reasonably  
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

1 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed  
2 deposition testimony or exhibits to depositions that reveal confidential material must be separately  
3 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
4 agreement;

5 (g) the author or recipient of a document containing the information or a custodian or  
6 other person who otherwise possessed or knew the information.

7 4.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless  
8 otherwise ordered by the court or permitted in writing by the designating party, material designated  
9 “Attorneys’ Eyes Only” may be disclosed to only attorneys working on this matter, which includes  
10 a single, in-house attorney (“designated in-house counsel”). The designated in-house counsel must  
11 be disclosed to all other parties, and must sign the “Acknowledgement and Agreement to Be  
12 Bound” (Exhibit A) prior to receiving any “Attorneys’ Eyes Only” material.

13 4.4 Filing Confidential Material. Before filing any confidential material or discussing  
14 or referencing such material in court filings, the filing party shall confer with the designating party,  
15 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
16 remove the “Confidential” or “Attorneys’ Eyes Only” designation, whether the document can be  
17 redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the  
18 meet and confer process, the designating party must identify the basis for sealing the specific  
19 confidential information at issue, and the filing party shall include this basis in its motion to seal,  
20 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the  
21 procedures that must be followed and the standards that will be applied when a party seeks  
22 permission from the court to file material under seal. A party who seeks to maintain the  
23 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),  
24 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in

1 the motion to seal being denied, in accordance with the strong presumption of public access to the  
2 Court's files.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
5 or non-party that designates information or items for protection under this agreement must take  
6 care to limit any such designation to specific material that qualifies under the appropriate  
7 standards. The designating party must designate for protection only those parts of material,  
8 documents, items, or oral or written communications that qualify, so that other portions of the  
9 material, documents, items, or communications for which protection is not warranted are not swept  
10 unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
12 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
13 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
14 and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated for  
16 protection do not qualify for protection, the designating party must promptly notify all other parties  
17 that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
19 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
20 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
21 be clearly so designated before or when the material is disclosed or produced.

22 (a) Information in documentary form: (e.g., paper or electronic documents and  
23 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
24 the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"

1 to each page that contains confidential material. If only a portion or portions of the material on a  
2 page qualifies for protection, the producing party also must clearly identify the protected portion(s)  
3 (e.g., by making appropriate markings in the margins).

4 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any  
5 participating non-parties must identify on the record, during the deposition or other pretrial  
6 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
7 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
8 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
9 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
10 at trial, the issue should be addressed during the pre-trial conference.

11 (c) Other tangible items: the producing party must affix in a prominent place on the  
12 exterior of the container or containers in which the information or item is stored the word  
13 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the  
14 information or item warrant protection, the producing party, to the extent practicable, shall identify  
15 the protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
17 designate qualified information or items does not, standing alone, waive the designating party’s  
18 right to secure protection under this agreement for such material. Upon timely correction of a  
19 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
20 in accordance with the provisions of this agreement.

21 6. CHALLENGING “CONFIDENTIAL” AND “ATTORNEYS’ EYES ONLY”  
22 DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
24 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
2 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
3 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
4 original designation is disclosed.

5         6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
6 regarding confidential designations without court involvement. Any motion regarding confidential  
7 designations or for a protective order must include a certification, in the motion or in a declaration  
8 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
9 affected parties in an effort to resolve the dispute without court action. The certification must list  
10 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
11 to-face meeting or a telephone conference.

12         6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
13 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
14 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
15 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
16 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
17 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
18 the material in question as confidential until the court rules on the challenge.

19     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
20 LITIGATION

21         If a party is served with a subpoena or a court order issued in other litigation that compels  
22 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
23 “ATTORNEYS’ EYES ONLY,” that party must:

1 (a) promptly notify the designating party in writing and include a copy of the subpoena  
2 or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
4 the other litigation that some or all of the material covered by the subpoena or order is subject to  
5 this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
7 designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
10 material to any person or in any circumstance not authorized under this agreement, the receiving  
11 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
12 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
13 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
14 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
15 Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently  
19 produced material is subject to a claim of privilege or other protection, the obligations of the  
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
21 is not intended to modify whatever procedure may be established in an e-discovery order or  
22 agreement that provides for production without prior privilege review. The parties agree to the  
23 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.



10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 23rd day of January, 2020.

SEBRIS BUSTO JAMES

STOEL RIVES LLP

s/Darren Feider

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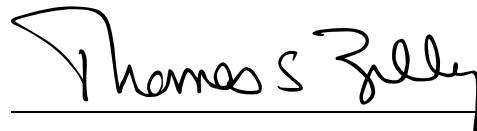
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Attorneys for Defendants

1 Pursuant to the parties' stipulation, docket no. 33, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal  
4 or state proceeding, constitute a waiver by the producing party of any privilege applicable to  
5 those documents, including the attorney-client privilege, attorney work-product protection, or  
6 any other privilege or protection recognized by law.

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8 DATED: January 24, 2020

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11 Thomas S. Zilly  
12 United States District Judge  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on [date] in the  
7 case of *Parker, Smith & Feek, Inc. v. Michael Reph, et al., Case No. 2:19-cv-01456*. I agree to  
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: \_\_\_\_\_

17 City and State where sworn and signed: \_\_\_\_\_

18 Printed name: \_\_\_\_\_

19 Signature: \_\_\_\_\_